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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/565,471 | 01/20/2006 | Han-Kyo Lee | JCLA19107 | 9899 |

7590
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06/26/2009

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| EXAMINER |
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HELLING, KAITLYN ELIZABETH

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| ART UNIT | PAPER NUMBER |
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3739

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| MAIL DATE | DELIVERY MODE |
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06/26/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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|------------------------------|---------------------------------------|-------------------------------------|--|
| Office Action Summary | Application No. 10/565,471 | Applicant(s) LEE, HAN-KYO | |
| | Examiner KAITLYN E. HELLING | Art Unit 3739 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 June 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,5,7,9-11,13 and 14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,5,7,9-11,13 and 14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.
2. The Amendment filed on June 04, 2009 has been entered. Claims 1, 5, 7, 9-11, 13 and 14 remain pending in the application. Claims 2-4, 6, 8 and 12 have been cancelled.

Response to Arguments

3. Applicant's arguments filed June 04, 2009 with regards to Pearl failing to disclose that the LEDs are regularly aligned behind the massage protrusions of the case in equidistance have been fully considered but they are not persuasive. The examiner points to the abstract of Pearl where it is stated that the LEDs are aligned with the teeth to provide light across the area exposed by the teeth. In addition, the LEDs are going to be aligned behind the teeth as the light radiating section is in the case from which the massage protrusions extend as see in Figs. 1A-2B and especially in Figs. 7B-12B.
4. Applicant's arguments, see the first paragraph of page 8, filed June 04, 2009, with respect to applicant's argument that Black fails to disclose the cylindrical member and that the arrangement of the laser source being installed at the rear portion of the cylindrical member and the lens section being installed at the front portion have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection has been made as set forth below.

Claim Rejections - 35 USC § 103

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 1, 7 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. 2003/0093915 A1 to Pearl et al. (Pearl) in view of U.S. 2004/0006332 A1 to Black (Black), U.S. 3,967,372 to Beck et al.(Beck), U.S. 4,924,341 to Inagaki (Inagaki), U.S. 2002/0066150 to Bigio (Bigio) and U.S. 3,938,018 to Dahl (Dahl).

In Reference to Claim 1

Pearl teaches:

An alopecia healing apparatus ([003], Page 1) comprising:

a case provided at a first end thereof with a handle section, and a second end thereof with a massage section having a plurality of massage protrusions (Fig. 1);

a light radiating section including a plurality of LEDs (Abstract), which are regularly aligned behind the massage protrusions of the case (Abstract) in equidistance (Fig. 7B);

a laser radiating section (Abstract) aligned in the case corresponding to the massage section so as to radiate low-level laser beam (Fig. 1);

a control section including a microcomputer ([0072] Page 6) for controlling operations of the light radiating section, the laser radiating section and the vibration device; and

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a power source for supplying power to the light radiating section and the laser radiating section (18, Fig. 1 and [0060] Page 5).

the laser radiation section includes a laser source (8) installed at the rear (Fig. 1 as the laser beam is to the rear of the head contacting portion) and a lens section ([0056-0057], Page 4) installed at the front (the lens is installed in the head contacting portion which is to the front of the laser source) in order to widely scatter the laser beam radiated from the laser source ([0056-0057], Page 4) and the laser source and the lens section are aligned in a direction of the length of the massage protrusions ([0056-0057], Page 4).

However, Pearl does not teach:

a vibration device installed in the case so as to vibrate the case and the power source providing power to the vibration device;

wherein the handle section is inclined from the massage portion at an angle of 15 degrees so as to enlarge a contact area between the massage section and a scalp;

the massage protrusions are made of soft synthetic resin in order to allow a user to feel pleasant when combing a user's hair or when massage a user's scalp

that the laser source and the lens are installed in a cylindrical member

the laser source and the lens section are aligned in a direction of the length of the massage protrusions.

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However, in light of the lack of any disclosed criticality of the laser source and the lens section being installed in a cylindrical member, it would have been obvious to one having ordinary skill in the art at the time of the invention to have modified Pearl to include a cylindrical member as an obvious matter of design choice as the change in shape from the rectangular configuration of Pearl to a circular configuration does not patentably define over the prior art unless it modifies the operation of the device.

Similarly, in light of the lack of any disclosed criticality of the laser source and the lens section being aligned in a direction of the length of the massage protrusions, it would have been obvious to one having ordinary skill in the art at the time of the invention to have modified Pearl to align the laser source and lens section with the massage protrusions as it has been held that a mere rearrangement of parts does not patentably define over the prior art unless it modifies the operation of the device.

Black teaches:

a vibration device and a power source installed in the case so as to vibrate the case (Abstract);

It would have been obvious to one having ordinary skill in the art at the time of the invention to have included the vibration device of Black with the apparatus of Pearl since Black teaches the combination of light and vibration therapies in order to massage the body structures and improve the transparency to the light beams to provide additional or alternative massaging effects ([0006], Page 2).

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However, neither Pearl nor Black teaches:

a handle section inclined from the massage section

Beck teaches:

the use of an inclination between a head assembly and the handle portion so as to make it more convenient to grasp the handle of the shaver and apply the head against the user (Col. 2, lines 35-39).

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to have modified Pearl and Black with the inclination of the head with respect to the handle for a more convenient grasp and application to the user as taught by Beck (Col. 2, lines 35-39).

Similarly with respect to the angle being 15° , the prior art need not disclose the exact angle of inclination which will optimize the contact area of the treatment portion of an apparatus. As such, the angle 15° does not render the claim patentably distinct as this angle would result from routine experimentation.

However, neither Pearl, Black nor Beck teaches:

The use of a soft synthetic resin as the protrusion material

Inagaki teaches:

the use of synthetic resin as a way to promote blood circulation (Col. 2, lines 50-53).

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Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to have used synthetic resin for the massage protrusions for its comfortable touch to the body portions of the user because of its appropriate rigidity and flexibility (Col. 2, lines 50-53).

With respect to a power source driving the light radiating section, the laser radiating section, and the vibration device, the examiner asserts that it would have been obvious to one having ordinary skill in the art at the time of the invention to have modified Pearl, Black, Beck and Inagaki to have integrated the power motor of Pearl for the light radiating section and the laser radiating section with the power motor of Black for the vibrating section as a matter of obvious design choice since the light radiating means, laser radiating means and the vibration means all require power to be provided (see MPEP 2144.04).

However, neither Pearl, Black, Beck nor Inagaki teaches:

length of the massage protrusions is gradually increased from a center to upper and lower directions thereof so that the uppermost and lowest protrusions have the longest length

Bigio teaches:

length of bristles being gradually increased from a center to upper and lower directions thereof so that the uppermost and lowest protrusions have the longest length (Fig. 4).

While Inagaki does not specifically speak to the length of the bristles it can be seen in Fig. 4 and 7, that the construction of the hairbrush will necessarily give rise to

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the desired bristle configuration and therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to have further modified Pearl, Black, Beck and Inagaki to have included the bristle configuration of Bigio as Bigio teaches that it is an object of the invention to provide an anatomically correct hairbrush that gives the user a wider brushing area, and thus promotes more contact between the hair and the bristles (Col. 2, lines 5-10).

However, neither Pearl, Black, Beck, Inagaki nor Bigio teaches:

the power source including a chargeable battery, a charge terminal formed at a lower end of the case, and an adapter provided to charge the chargeable battery by receiving the case therein.

Dahl teaches:

the use of a chargeable battery (Abstract), a charge terminal formed at a lower end of the case (Col. 3, lines 30-34), and an adapter to charge the battery by receiving the case therein (Fig. 2).

It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified Pearl, Black, Beck and Inagaki with the charging system of Dahl in order to facilitate automatic charging without the user having to worry about plugging or unplugging various connections as taught by Dahl (Col. 1, lines 33-45).

In Reference to Claim 7

Pearl in view of Black, Beck, Inagaki, Bigio and Dahl teaches the apparatus of claim 1, with Black teaching the further limitation of the vibration device including a vibrator motor ([0006], Page 2) capable of vibrating itself. It would have been obvious to

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one having ordinary skill in the art at the time of the invention to have selected a motor as that mechanical means of vibration in order to provide the therapeutic effects of the vibration ([0006], Page 2).

In Reference to Claim 11

Pearl in view of Black, Beck, Inagaki, Bigio and Dahl teaches an alopecia healing apparatus as described above, but not a continuously repetitive cycle. Black teaches that depending on the hygienic effect sought it may be advantageous to provide for varying parameters such as pulse, repetition rate, and pulse duration (Col. 2, lines 29-57) as well as the addition of vibration (Col. 10, lines 30-53). While not specifically pointed out in Black, it would be inherent that the varying parameter settings of Black would allow for the repeatedly switching on/off the light radiating section for 30 seconds as a vibration device is operated and a second step of radiating light for 30 seconds by using the light radiating section. Therefore, it would have been obvious to one having ordinary skill in that art at the time of the invention to have modified Pearl in view of Black, Beck and Inagaki to have included the further limitation of Black of varying parameter of pulsing and repetition to achieve the desired treatment as taught by Black (Col.2, lines 30-53).

7. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. 2003/0093915 A1 to Pearl et al. (Pearl) in view of U.S. 2004/0006332 A1 to Black (Black), U.S. 3,967,372 to Beck et al. (Beck), U.S. 4,924,341 to Inagaki (Inagaki), U.S. 2002/0066150 to Bigio (Bigio) and U.S. 3,938,018 to Dahl (Dahl) as applied to claim 1 above, and further in view of U.S. 4,732,834 to Honda et al. (Honda).

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Pearl in view of Black, Beck, Inagaki, Bigio and Dahl teaches the apparatus of claim 1, but not the use of a light collecting section with a Cr-coated film in order to prevent the light radiating from the LEDs from being dispersed into an exterior and in order to make linear-type light. Honda, however, teaches the use of a light collecting member (Abstract) with a reflection preventive layer in the inside (Abstract), and the use of a chromium coating (Col. 9, lines 66-68 and Col. 10, lines 1-2). It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified Pearl, Black, Beck and Inagaki with the light collecting section of Honda in order to reduce the occurrence of interference fringe due to the interference phenomenon (Abstract).

8. Claims 9, 10, 13 and 14 rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. 2003/0093915 A1 to Pearl et al. (Pearl) in view of U.S. 2004/0006332 A1 to Black (Black), U.S. 3,967,372 to Beck et al. (Beck), U.S. 4,924,341 to Inagaki (Inagaki), U.S. 2002/0066150 to Bigio (Bigio) and U.S. 3,938,018 to Dahl (Dahl) as applied to claims 1 and 6 above, and further in view of U.S. 6,450,941 to Larsen (Larsen).

In Reference to Claims 9 and 10

Pearl in view of Black, Beck, Inagaki, Bigio and Dahl teaches the apparatus of claim 1, but not the specific lasers being a He-Ne laser with a wavelength about 630-660nm or a Ga-As laser with a wavelength of about 790-904nm. Larsen, however, teaches the laser to have a wavelength between 350 and 1200nm (Abstract) and more specifically in the infrared light range of 600-1200nm as this has been discovered to be

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capable of stimulating the mitochondria while at the same time possessing a sufficient penetration depth (Col. 1, lines 49-51).

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to have used a laser within the wavelength range of Larsen to achieve the therapeutic benefit of stimulation and adequate penetration. Similarly, while Larsen does not teach the He-Ne or Ga-As lasers specifically, it would have been obvious to one having ordinary skill in the art at the time of the invention to have selected a laser on the basis of its suitability for the intended use as a matter of obvious design choice (See MPEP 2144).

In Reference to Claims 13 and 14

Pearl in view of Black, Beck, Inagaki, Bigio and Dahl teaches the apparatus of claim 6, but not the specific lasers being a He-Ne laser with a wavelength about 630-660nm or a Ga-As laser with a wavelength of about 790-904nm. Larsen, however, teaches the laser to have a wavelength between 350 and 1200nm (Abstract) and more specifically in the infrared light range of 600-1200nm as this has been discovered to be capable of stimulating the mitochondria while at the same time possessing a sufficient penetration depth (Col. 1, lines 49-51).

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to have used a laser within the wavelength range of Larsen to achieve the therapeutic benefit of stimulation and adequate penetration. Similarly, while Larsen does not teach the He-Ne or Ga-As lasers specifically, it would have been obvious to one having ordinary skill in the art at the time of the invention to have

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selected a laser on the basis of its suitability for the intended use as a matter of obvious design choice (See MPEP 2144).

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to KAITLYN E. HELLING whose telephone number is (571)270-5845. The examiner can normally be reached on Monday - Friday 9:00 a.m. to 5:30 p.m. EDT.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C.M. Dvorak can be reached on (571)272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/KAITLYN E. HELLING/
Examiner, Art Unit 3739

/Roy D. Gibson/
Primary Examiner, Art Unit 3739